

रजिस्ट्री सं. डी.एल.-33004 / 2000

REGISTERED NO. DI-33004/2000



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं 55] नई दिल्ली, बुधवार, दिसम्बर 13, 2000/अग्रहायण 22, 1922

No. 55] NEW DELHI, WEDNESDAY, DECEMBER 13, 2000/AGRAHAYANA 22, 1922

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 13-12-2000.

BILL No. 194 OF 2000

A Bill to repeal the Colonial Prisoners Removal Act, 1884.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Colonial Prisoners Removal (Repeal) Short title. Act, 2000.

2. The Colonial Prisoners Removal Act, 1884 is hereby repealed.

Repeal of Act
47 and 48
Vict , C. 31.

STATEMENT OF OBJECTS AND REASONS

The Colonial Prisoners Removal Act, 1884 (47 and 48 Vict., c. 31) was enacted before independence at a time when the British Government had a large number of colonies, with a view to providing for the removal of prisoners and criminal lunatics from one colony to another or to the mainland of the United Kingdom. The Act has become obsolete and there is no justification for its retention in the statute book as it has no relevance in the present day. The Commission on Review of Administrative Laws headed by Shri P. C. Jain has also recommended its repeal.

2. The Bill seeks to achieve the above object.

NEW DELHI;
The 27th November, 2000.

L. K. ADVANI.

BILL NO. 195 OF 2000

A Bill further to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Industrial Development Bank of India Act, 1964, the Export-Import Bank of India Act, 1981, the National Bank for Agriculture and Rural Development Act, 1981 and the National Housing Bank Act, 1987.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS)
ACT, 1970Amendment of
section 2.

2. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter in this Chapter referred to as the Bank Nationalisation Act),—

5 of 1970

(a) after clause (b), the following clause shall be inserted, namely:—

‘(ba) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;’;

(b) clause (fa) shall be re-numbered as clause (fb) thereof and before the clause (fb) so re-numbered, the following clause shall be inserted, namely:—

(fa) “Financial Restructuring Authority” means the Authority established under sub-section (1) of section 18B;’.

Amendment of
section 3.

3. In section 3 of the Bank Nationalisation Act,—

(a) in sub-section (2B), after clause (c), the following proviso shall be inserted, namely:—

‘Provided that on and after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, the provisions of clause (c) shall have effect as if for the words “not less than fifty-one per cent. of the paid-up capital”, the words “not less than thirty-three per cent. of the paid-up capital” had been substituted.’;

(b) in sub-section (2BBB), the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply on and after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000.”

(c) in sub-section (2D), the words “not held by the Central Government” shall be omitted.

Amendment
of section 9.

4. In section 9 of the Bank Nationalisation Act,—

(a) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) in clause (b), for the proviso, the following proviso shall be substituted, namely:—

“Provided that no such director referred to in this clause shall be a director of more than two other corresponding new banks.”;

(iii) clauses (c), (d) and (g) shall be omitted;

(iv) in clause (h), for the words “not more than six directors to be nominated by the Central Government”, the words “not more than eight directors to be nominated by the Central Government” shall be substituted;

(b) in sub-section (3A), in clause (A), after sub-clause (vi), the following sub-clause shall be inserted, namely:—

“(vii) accountancy,”

5. After section 9 of the Bank Nationalisation Act, the following section shall be inserted, namely:—

“9A. (1) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time and by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

(2) Any person appointed as additional director in pursuance of this section—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further period not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

6. In section 10A of the Bank Nationalisation Act,—

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss and adopt” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with the provisions of this section.”.

7. After section 10A of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

‘10B. (1) There shall be attached to the balance-sheet of corresponding new bank having a subsidiary or subsidiaries at the end of the financial year as at which the corresponding new bank’s balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

(a) a copy of the balance-sheet of the subsidiary;

(b) a copy of its profit and loss account;

(c) a copy of the report of its Board of Directors;

(d) a copy of the report of its auditors;

(e) a statement of the corresponding new bank’s interest in the subsidiary as specified in sub-section (3);

(f) the statement referred to in sub-section (5), if any; and

(g) the report referred to in sub-section (6), if any.

Insertion of new section 9A

Power of Reserve Bank to appoint additional director

Amendment of section 10A.

Insertion of new sections 10B and 10C.

Balance-sheet of corresponding new bank to include certain particulars as to its subsidiary

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force,—

10 of 1949.

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank;

(b) the profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a);

10 of 1949

(c) where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months;

(d) where the financial year of subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profit after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not

practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank, namely :—

(a) whether there has been any, and, if so, what, change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply to such extent as may be specified in the direction.

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, a dividend has been declared by a corresponding new bank but has not been paid, or claimed, within forty-two days from the date of declaration, to any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called, "unpaid dividend account".

Payment of dividend.

Explanation.—In this sub-section, the expression "dividend which remain unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.'

1 of 1956.

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.

1 of 1956

8. After section 18 of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

"18A. (1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

(a) that on account of circumstances beyond the control of the corresponding new bank, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; or

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated; or

(c) that affairs of the corresponding new bank are being conducted in a manner detrimental to the interests of its depositors or banking policy; or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint under section 18B an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period of three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairman and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged, by or on behalf of the Board of Directors of such corresponding new bank, or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is reconstituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the power exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

Insertion of
new sections
18A to 18F.

Power of
Central
Government
to supersede
Board of
directors of
new
correspon-
ding bank.

5 of 1970.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairman and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as the Financial Restructuring Authority.

Constitution of Financial Restructuring Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven Members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be prescribed.

(5) The salary and allowances and other conditions of service of the Chairperson or of a Member of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been established and a Chief Executive Officer appointed.

18C. (1) The Financial Restructuring Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum of such meetings) as may be prescribed.

Meetings of Financial Restructuring Authority.

(2) The Chairperson or, if for any other reason, he is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority vote of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

Vacancy, etc., not to invalidate proceedings of Financial Restructuring Authority.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18A, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or Executive Director of any corresponding new bank as the Chief Executive Officer of the bank whose Board of Directors has been superseded under this sub-section.

Chief Executive Officer.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or reconstitution of the Board of Directors of the corresponding new bank referred to in section 18A, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(4) Subject to general superintendence, direction and management of the affairs of the Financial Restructuring Authority, the Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors had been superseded.

(5) The Chief Executive Officer shall be *ex officio* member of the Financial Restructuring Authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of directors had been superseded, as may be specified by the Financial Restructuring Authority.

Power to make rules.

18F. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the times and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

CHAPTER III

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

Amendment of section 2.

9. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [hereafter in this Chapter referred to as the Bank (Second) Nationalisation Act], after clause (da), the following clauses shall be inserted, namely:—

‘(db) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;

‘(dc) “Financial Restructuring Authority” means the Authority established under sub-section (1) of section 18B;’.

10. In section 3 of the Bank (Second) Nationalisation Act,—

(a) in sub-section (2B), after clause (c), the following proviso shall be inserted, namely:—

“Provided that on and after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, the provisions of clause (c) shall have effect as if for the words “not less than fifty-one per cent. of the paid-up capital”, the words “not less than thirty-three per cent. of the paid-up capital” had been substituted;”;

(b) in sub-section (2BBB), the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply on and after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000.”;

(c) in sub-section (2D), the words “not held by the Central Government” shall be omitted.

11. In section 9 of the Bank (Second) Nationalisation Act,—

Amendment of section 3

Amendment of section 9.

(a) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) in clause (b), for the proviso, the following proviso shall be substituted, namely:—

“Provided that no such director referred to in this clause shall be a director of more than two other corresponding new banks.”;

(iii) clauses (c), (d) and (g) shall be omitted;

(iv) in clause (h), for the words “not more than six directors to be nominated by the Central Government”, the words “not more than eight directors to be nominated by the Central Government” shall be substituted;

(b) in sub-section (3A), in clause (A), after sub-clause (vii), the following sub-clause shall be inserted, namely:—

“(viii) accountancy.”.

12. After section 9 of the Bank (Second) Nationalisation Act, the following section shall be inserted, namely:—

“9A. (1) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time and by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

Insertion of new section 9A

Power of Reserve Bank to appoint additional director

(2) Any person appointed as additional director in pursuance of this section,—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further period not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

Amendment of section 10A.

13. In section 10A of the Bank (Second) Nationalisation Act,—

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss and adopt” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with the provisions of this section.”.

Insertion of new sections 10B and 10C.

Balance-sheet of corresponding new bank to include certain particulars as to its subsidiary.

14. After section 10A of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

‘10B. (1) There shall be attached to the balance-sheet of corresponding new bank’s having a subsidiary or subsidiaries at the end of the financial year as at which the corresponding new bank’s balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be,—

- (a) a copy of the balance-sheet of the subsidiary;
- (b) a copy of its profit and loss account;
- (c) a copy of the report of its Board of Directors;
- (d) a copy of the report of its auditors;
- (e) a statement of the corresponding new bank’s interest in the subsidiary as specified in sub-section (3);
- (f) the statement referred to in sub-section (5), if any; and
- (g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force,—

10 of 1949.

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank;

(b) the profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a);

10 of 1949

(c) where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end

on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months;

(d) where the financial year of the subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profit after deducting its losses or *vice versa*,—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*,—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank namely:—

(a) whether there has been any, and, if so, what, change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply to such extent as may be specified in the direction.

Payment of dividend

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, a dividend has been declared by a corresponding new bank but has not been paid, or claimed, within forty-two days from the date of declaration, to any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid, or unclaimed, within the said period of forty-two days, to a special account to be called "unpaid dividend account".

Explanation.—In this sub-section, the expression "dividend which remain unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2000, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.'

1 of 1956.

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.

1 of 1956.

Insertion of new sections 18A to 18F
Power of Central Government to supersede Board of Directors of new corresponding bank

15. After section 18 of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

'18A. (1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

(a) that on account of circumstances beyond the control of the corresponding new bank, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; or

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Central Government under this Act

40 of 1980

or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated; or

(c) the affairs of the corresponding new bank are being conducted in a manner detrimental to the interests of its depositors or banking policy; or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint under section 18B an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period of three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairman and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is reconstituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the power exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairman and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as the Financial Restructuring Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven Members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other

discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be prescribed.

(5) The salary and allowances and other conditions of service of the Chairperson and Member of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been established and a Chief Executive Officer appointed.

18C. (1) The Financial Restructuring Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum of such meetings) as may be prescribed.

(2) The Chairperson or, if for any other reason, he is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority vote of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18A, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or Executive director of any corresponding new bank as the Chief Executive Officer of the bank whose Board of Directors had been superseded under this sub-section.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or reconstitution of the Board of Directors of the corresponding new bank referred to in section 18A, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(4) Subject to general superintendence, direction and management of the affairs of the Financial Restructuring Authority, the Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors had been superseded.

(5) The Chief Executive Officer shall be *ex officio* member of the Financial Restructuring Authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

Meetings of
Financial
Restructuring
Authority.

Vacancy, etc.,
not to invali-
date proce-
dings of
Financial Res-
tructuring
Authority.

Chief Execu-
tive Officer.

18F. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the times and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.'

CHAPTER IV

AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

23 of 1955.

16. In section 20 of the State Bank of India Act, 1955 (hereafter in this Chapter referred to as the State Bank Act),—

Amendment of section 20

(a) in sub-section (3), the words "and thereafter until his successor shall have been duly elected," shall be omitted;

(b) in sub-section (3A), the words "or nominated under clause (d) of that section" shall be omitted;

(c) after sub-section (3A), the following sub-section shall be inserted, namely:—

"(3B) Subject to the provisions contained in sub-section (4), a director nominated under clause (d) of section 19 shall hold office for such term, not exceeding three years, as the Central Government may specify and shall be eligible for re-nomination:

Provided that no such director shall hold office continuously for a period exceeding six years."

17. In section 21A of the State Bank Act, in sub-section (1), the words "and thereafter until his successor has been duly nominated" shall be omitted.

Amendment of section 21A.

CHAPTER V

AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

18. In section 26 of the State Bank of India (Subsidiary Banks) Act, 1959,—

Amendment of Act 38 of 1959.

(a) in sub-section (2), the words "and thereafter until his successor is duly elected," shall be omitted;

(b) in sub-section (2A), for the words "and thereafter until his successor shall have been duly nominated or appointed", the words "and thereafter until his successor shall have been duly appointed" shall be substituted.

CHAPTER VI

AMENDMENTS TO CERTAIN OTHER ENACTMENTS

Amendment of
Act 47 of
1961.

19. In section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, in sub-section (2), in clause (ii), the words "and thereafter until his successor assumes office," shall be omitted.

Amendment of
Act 18 of
1964

20. In section 6 of the Industrial Development Bank of India Act, 1964, in sub-section (4A), the words "and thereafter until his successor assumes office," at both the places where they occur, shall be omitted.

Amendment of
Act 28 of
1981.

21. In section 6 of the Export-Import Bank of India Act, 1981, in sub-section (6), the words "and thereafter until his successor enters upon his office," shall be omitted.

Amendment of
Act 61 of
1981

22. In section 7 of the National Bank of Agricultural and Rural Development Act, 1981, in sub-section (2), the words "and thereafter until his successor enters upon his office," shall be omitted.

Amendment
of Act 53 of
1987

23. In section 7 of the National Housing Bank Act, 1987, in sub-section (2), the proviso shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Fourteen major Indian Scheduled banks, each with deposits of rupees fifty crores and more, were nationalised in July, 1969 by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. However, the Supreme Court by a majority judgment delivered on the 10th day of February, 1970 declared that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, void. With a view of resuming control over these banks, the President promulgated, on the 14th day of February, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1970. The said Ordinance was replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. In conformity with the policy of State towards securing the principles laid down in clauses (b) and (c) of article 39 of the Constitution, six Indian private banks, each having deposits of rupees two hundred crores or more, were nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1980, promulgated by the President, on the 15th day of April, 1980. The said Ordinance was also replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

2. Following the recommendations of the Committee on the Financial System (Narasimham Committee), the Reserve Bank of India laid down certain norms for income recognition and provisioning and also for capital adequacy in relation to risk weighted assets of the banks. These norms were designed to put the financial accounting standards of Indian banks on a sound footing in line with current international practice. Following the introduction of these norms all the banks were required to build up their capital base substantially and ensure that the total capital equal at least 8 per cent. of their risk weighted assets by the 31st day of March, 1996. Since the resources of the Government were limited and the funds were required for other priority areas, it was not possible for the Government to contribute the substantial amounts now required by the nationalised banks for meeting the new prudential norms. The Central Government, therefore, decided that the nationalised banks which were in a position to do so may be allowed to approach the capital market to raise fresh equity to make their shortfall in capital requirements. In order to give effect to this decision, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 were amended, *inter alia*, to provide that the Board of Directors of the nationalised banks may, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, raise their paid up capital by public issue of shares subject to the conditions that the Central Government shall at all times hold not less than fifty one per cent. of the paid up capital of each corresponding new bank.

3. Following the introduction of prudential norms as recommended by the Committee on Financial System (Narasimhan Committee) and the stipulation of capital adequacy norms by the Reserve Bank of India, the nationalised banks experienced an immediate need for additional capital. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and The banking Companies Acquisition and Transfer of Undertakings) Act, 1980 provide that the holding of equity by the Central Government shall not be less than fifty one per cent. of the paid up capital of each of the corresponding new banks. Keeping in view the need of nationalised banks to raise further capital from the market in order to meet capital adequacy norms and constrain of the Central Government in providing further equity support, it is proposed to reduce the requirement of minimum share holding by the Central Government in each of the corresponding new bank to thirty three per cent. This is aimed at bringing operation of these banks in tune with the changing economic scenario and modern business practices.

4. It is proposed to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies Acquisition and Transfer of Undertakings) Act, 1980, *inter alia*, to:—

- (a) reduce the prescribed minimum shareholding of the Central Government in nationalised banks from fifty one per cent. to thirty three per cent;
- (b) remove the restriction on free transferability of shares held by the Central

Government with a view to facilitate acquisition, merger and financial restructuring on case to case basis;

(c) remove the existing restriction requiring the reduction of capital not below twenty five per cent. in all nationalised banks with a view to facilitate cleaning up of balance-sheet;

(d) increase number of whole-time directors from two to four;

(e) to empower the Central Government to nominate any officer of that Government as Director on the Board of not more than two banks in place of one bank;

(f) omit the provisions relating to mandatory nomination of directors by the Reserve Bank of India, financial institution and chartered accountant on the Board of banks;

(g) empower the shareholders of nationalised banks to discuss, adopt and approve the annual accounts and the balance-sheet of the nationalised banks at their annual general meeting;

(h) enable the banks to transfer the unclaimed dividends more than seven years old to Investor Education and Protection Fund established by the Central Government under section 205C of the Companies Act, 1956;

(i) to prescribe annexing of the details of the subsidiary or subsidiaries such as balance-sheet, profit and loss accounts and reports of auditors alongwith the annual report of the bank;

(j) empower the Central Government to supersede, on the recommendation of Reserve Bank of India the Board of Directors of any nationalised bank and constitute the Financial Restructuring Authority.

5. The State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Industrial Development Bank of India Act, 1964, the Export-Import Bank of India Act, 1981 the National Bank of Agricultural and Rural Development Act, 1981, and the National Housing Bank Act, 1987, provide that the part-time non-official directors on the Boards of Directors of financial institutions under the said Acts shall hold office for a period of three years or until successor is appointed subject to a maximum period of six years. Since a large number of part-time non-official directors in banks and financial institutions continued to hold office even after expiry of their term as their successor could not be appointed, it is proposed to amend the said Acts so as to provide that such non-official directors will vacate their office whether their successor is appointed or not. This amendment is on the lines of the holding of office by the part-time non-official directors in the nationalised banks. For the workmen and officer directors, the existing provisions are proposed to be continued.

6. The Bill seeks to achieve the above objects.

YASHWANT SINHA.

NEW DELHI;

The 27th November, 2000.

FINANCIAL MEMORANDUM

Clause 8 of the Bill inter alia contains provisions that the Central Government may, by notification and for reasons to be specified therein, supersede the Board of directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint under section 18B an authority to be known as the Financial Restructuring Authority. Similarly provisions relating to the corresponding new Banks Constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 are provided in clause 15 of the Bill. The expenditure on Financial Restructuring Authority will be borne of the concerned corresponding new bank and no expenditure is envisaged from the Consolidated Fund of India.

2. The provisions of the Bill do not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill proposes to insert new section 18F in the Banking Companies, (Acquisition and Transfer of Undertakings) Act, 1970 which confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to provide for the salary and allowances payable to and other terms and conditions of the Chairperson and members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

2. Clause 15 of the Bill proposes to insert new section 18F in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, which confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to provide for the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

3. The rules made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 196 OF 2000

A Bill to consolidate and amend the law for regulation of financial institutions, to protect the interests of the depositors of the financial companies and to prohibit receiving of deposits by unincorporated bodies and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Financial Companies Regulation Act, 2000.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commencement.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Advisory Council" means the Advisory Council for Financial Institutions constituted under sub-section (1) of section 3;

(b) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(c) "Bank" means, the Reserve Bank of India, constituted by the Reserve Bank of India Act, 1934;

(d) "Board" means the Board of Company Law Administration constituted under sub-section (1) of section 10E of the Companies Act, 1956;

(e) "business of financial institution" means,—

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than of its own;

(ii) the acquisition of shares, stocks, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;

(iii) the letting or delivering of any goods to a hirer under a hire-purchase finance agreement or to a lessee under a financial lease agreement;

(iv) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or any business similar thereto;

(v) receiving deposits from or providing loans or advances against securities to its shareholders;

(vi) receiving public deposit under any scheme or arrangement or in any other manner;

(vii) such other business or class of business as the Bank may, with the previous approval of the Central Government, by notification, specify;

(f) "chit" means a chit as defined in clause (b) of section 2 of the Chit Funds Act, 1982;

(g) "company" means a company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 591 of that Act;

(h) "corporation" means a corporation incorporated by an Act of any legislature;

(i) "deposit" includes and shall be deemed always to have included, any receipt of money by way of deposit or loan or in any other form, but does not include,—

(i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from—

(A) a banking company as defined in section 5 of the Banking Regulation Act, 1949 or a corresponding new bank as defined in clause

(da) of section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 or a Regional Rural Bank as defined in the Regional Rural Banks Act, 1976;

(B) a co-operative bank as defined in clause (cc) of section 5 of the Banking Regulation Act, 1949;

(C) a corporation or a company or a co-operative society registered under an Act of any legislature;

2 of 1934

1 of 1956.

40 of 1982

1 of 1956

10 of 1949.

38 of 1959

21 of 1976

10 of 1949.

18 of 1966
42 of 1958.

(D) the Central Government or a State Government or a local authority;

(E) any other source whose repayment is guaranteed by the Central Government or a State Government;

(F) a foreign Government or a foreign authority;

(G) the Asian Development Bank; being a Bank referred to in the Asian Development Bank Act, 1966; or International Finance Corporation being a corporation referred to in the International Finance Corporation (Status, Immunities and Privileges) Act, 1958; or

(H) any other institution that may be specified by the Bank in this behalf;

(iv) the amounts received in the ordinary course of business, by way of—

(A) security deposit,

(B) dealership deposit,

(C) earnest money, or

(D) advance against order for specific goods, properties or services;

(v) any amount received from an individual or a firm or an association of individuals, not being a body corporate, registered under any enactment relating to money lending which is, for the time being, in force in any State;

(vi) any money received against mortgage of immovable property, or against pledge of specific movable property, where the value of such security is not less than the money received; and

(vii) any amount received by way of subscription in respect of a chit.

Explanation.—Any credit given by a seller to a buyer on the sale of any property, whether movable or immovable, shall not be deemed to be deposit for the purpose of this clause;

(j) "depositor" means a person who has made a deposit and includes his heirs, legal representatives and assignee;

(k) "financial company" means a financial institution which is a company;

(l) "financial institution" means a non-banking institution which is carrying on as its principal business the business of financial institution;

(m) "High Court", in relation to a financial company means the High Court, exercising jurisdiction in the place where the registered office of the financial company is situated or, in the case of financial company incorporated outside India, where its principal place of business in India is situated;

(n) "net owned fund" means—

(A) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the financial company after deducting therefrom—

(i) accumulated balance of loss;

(ii) deferred revenue expenditure;

(iii) other intangible assets; and

(B) further reduced by the amounts representing—

(I) investments of such company in shares of—

- (i) its subsidiaries or holding company;
- (ii) companies in the same group;
- (iii) all other financial companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire purchase and lease finance) made to, and deposits with,—

- (i) subsidiaries or holding company of such company; and
- (ii) companies in the same group,

to the extent such amount exceeds ten per cent. of (A) above;

(o) "non-banking institution" means a company, a corporation or a co-operative society;

(p) "notification" means a notification published in the Official Gazette;

(q) "owned fund" means the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom—

- (i) accumulated loss;
- (ii) deferred revenue expenditure; and
- (iii) other intangible assets;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "public deposit" means the deposit as defined in clause (i) but does not include—

(i) any amount received from a relative of a director of the financial company;

(ii) any amount received by way of subscription, to any shares, stock, bonds or debentures pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the articles of association of the financial company and, retained up to a period not exceeding one hundred and eighty days;

(iii) any amount received from a foreign citizen or a foreign institution;

(iv) any amount received from any other source which may be specified by the Bank in this behalf;

(t) "record" includes the records maintained, in the form of books or stored in a computer, or in such other form as may be specified by the Bank from time to time;

(u) "Recovery Officer" means a Recovery Officer appointed by the Board under sub-section (18) of section 24;

(v) "regulations" means the regulations made by the Bank under this Act;

(w) "unencumbered approved securities" includes the approved securities lodged by a financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner.

(2) Words and expressions used but not defined in this Act but defined in the Reserve Bank of India Act, 1934 or the Banking Regulation Act, 1949 or the Companies Act, 1956 or the National Housing Bank Act, 1987 shall have the same meanings assigned to them in those Acts.

2 of 1934.
10 of 1949.
1 of 1956.
53 of 1987.

CHAPTER II

ADVISORY COUNCIL

3. (1) The Bank may, by notification constitute a Council to be known as the Advisory Council for Financial Institutions.

(2) The Advisory Council shall consist of the following members, namely:—

(a) a Deputy Governor of the Bank to be nominated by the Governor—Chairperson;

(b) such number of members not exceeding three to be nominated by the Bank from amongst the persons having special knowledge of banking, law, accountancy, business management, transport sector, investment, marketing or conduct of business of financial institutions;

(c) not more than four members to be nominated by the Bank from amongst the representatives of associations of financial institutions, depositors' associations, if any, and any other person having special knowledge of, and the professional experience in, the area which, in the opinion of the Bank, would be useful to the Bank in administration of the provisions of this Act;

(d) the Chief General Manager-in-Charge of the department in the Bank administering the provisions of this Act — member *ex officio*.

(3) The term of office of the Chairperson and *ex officio* member a of the Advisory Council shall be co-terminus with their term as the Deputy Governor or the Chief General Manager, as the case may be.

(4) The members of the Advisory Council nominated under clauses (b) and (c) of sub-section (2) shall hold office for such term not exceeding five years as the Bank may specify:

Provided that a member shall be eligible for re-nomination.

(5) The Advisory Council shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(6) The Chairperson or, if for any reason, he is unable to attend the meeting of the Council, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(7) All questions which come up before any meeting of the Advisory Council shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote.

(8) The fee and allowances to be made to the members referred to in clauses (b) and (c) of sub-section (2) and the manner of filling up of vacancies and the procedure to be followed in discharge of their functions shall be such as may be specified by regulations.

4. (1) The functions of the Advisory Council shall be to advise the Bank on any matter under this Act or arising therefrom which may be referred to it by the Bank.

(2) Without prejudice to the provisions contained in sub-section (1), the Advisory Council shall examine any matter referred to in that sub-section and make recommendations thereon within such period as may be specified by regulations.

(3) The recommendations of the Advisory Council shall not be binding on the Bank.

5. No person shall be eligible to be nominated under clause (b) or clause (c) of sub-section (2) of section 3, if he—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has made a default in making a payment to his creditors; or

(c) has become physically or mentally incapable of acting as a member; or

(d) is, or at any time has been, a director or an employee of a financial company against which an order prohibiting such company from accepting public deposit had been issued by the Bank; or

(e) has been at any time convicted for an offence under this Act; or

(f) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(g) has in the opinion of the Bank so abused his position as to render his continuation in office detrimental to the public interest.

Functions of
Advisory
Council.

Disqualifica-
tions for
nomination of
members of
Advisory
Council.

CHAPTER III

REGULATION OF FINANCIAL INSTITUTIONS

Registration of financial companies.

6. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, no financial company shall commence or carry on the business of a financial institution without obtaining a certificate of registration issued under this section:

Provided that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934, as it stood immediately before the commencement of this Act, shall be deemed to have obtained the certificate of registration under this section:

2 of 1934

Provided further that no financial company shall receive public deposit unless such company has been authorised by the Bank and such authorisation is recorded by the Bank in its certificate of registration:

Provided also that a non-banking financial company which—

(a) had been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 as it stood immediately before the commencement of this Act; and

2 of 1934

(b) was entitled to receive or hold public deposit under that Act or directions given thereunder,

shall be deemed to have obtained the certificate of registration under this section may continue to receive or hold public deposits:

Provided also that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934, as it stood immediately before the commencement of this Act, and was entitled to receive or hold public deposit in accordance with the provisions of said Act or directions given thereunder shall within six months from the date of commencement of this section, surrender to the Bank the certificate of registration and obtain a certificate of registration authorising to receive or hold public deposit.

2 of 1934.

(2) Every financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company, which had made an application for registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 as it stood immediately before the commencement of this Act, but which has not been issued a certificate of registration under that Act, before commencement of this Act, shall be deemed to have made an application under this section and may continue to carry on the business of financial institutions and if it was entitled to receive or hold public deposit under that Act or directions given thereunder it may continue to receive, hold and refund public deposits in accordance with the provisions of this Act or directions given thereunder until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

2 of 1934.

(3) The Bank may, for the purpose of considering the application for registration and authorising a financial company to receive public deposit require to be satisfied by an inspection of the records and books of the financial company or otherwise that the following conditions are fulfilled,—

(a) that the financial company is or shall be in a position to pay its depositors in full as and when their claims accrue;

(b) that the affairs of the financial company are not being or are not likely to be conducted in a manner detrimental to the interests of its depositors;

(c) that the general character of the management or the proposed management of the financial company shall not be prejudicial to the public interest or the interests of its depositors;

(d) that the financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration or authorisation for receiving public deposits to the financial company to commence or carry on the business of financial institution in India;

(f) that the grant of certificate of registration or authorisation for receiving public deposits shall not be prejudicial to the operation and consolidation of the

financial sector consistent with monetary stability, operation of credit system and economic growth and considering such other relevant factors which the Bank may specify;

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that receiving of public deposits in India by a financial company shall not be prejudicial to the public interest or to the interests of the depositors.

(4) The Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration or authorise a financial company to receive public deposits; subject to such conditions, which it may consider, fit to impose.

(5) Every financial company shall obtain prior approval of the Bank for any substantial change in its management, change in location of its registered office or change in its name:

Provided that decision of the Bank, whether the change in management of a financial company is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

(6) The Bank may cancel a certificate of registration granted to a financial company or revoke the authorisation given under the second proviso to sub-section (1) if such company—

(a) ceases to carry on its business of financial institution; or

(b) ceases to receive or hold public deposit; or

(c) has failed to comply with any condition subject to which the certificate of registration or authorisation to receive public deposits has been issued to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to

(g) of sub-section (3); or

(e) fails to,—

(i) comply with any direction issued by the Bank under the provisions of this Act; or

(ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Act; or

(iii) submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(iv) obtain prior approval of the Bank required under sub-section (5);

(f) has been prohibited from receiving deposit by an order made by the Bank under the provisions of this Act or was prohibited under the provisions of the Reserve

Bank of India Act, 1934 and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration or revocation of authorisation of receiving public deposits on the ground that the financial company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration or revocation of authorisation of receiving public deposits shall be prejudicial to public interest or the interests of the depositors or the financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, or revocation of authorisation of receiving public deposits such company shall be given a reasonable opportunity of being heard.

(7) A financial company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration or revocation of authorisation of receiving public deposits may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation or revocation of authorisation of receiving public deposits is communicated to it, to the Central Government:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

(8) A financial company, which is holding public deposits and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled or authorisation of receiving public deposits has been revoked shall, notwithstanding the rejection of its application for grant of certificate of registration or cancellation of certificate of registration, revocation of authorisation of receiving public deposits be deemed to be a financial company until it repays entire public deposit held by it.

(9) Any branch or office in India of a company referred to in section 591 of the Companies Act, 1956, receiving public deposit in India, shall be a financial company for the purposes of this Act.

1 of 1956.

Requirement
of net owned
fund.

7. (1) No financial company shall be authorised to receive or hold public deposits under the second proviso to sub-section (1) of section 6 without—

(a) obtaining a certificate of registration issued under sub-section (2) of section 6; and

(b) having the net owned fund of not less than two hundred lakhs of rupees or such other amount not exceeding ten crores of rupees as the Bank may, by notification, specify.

Provided that the net owned fund held by a non-banking financial company, which—

(a) had been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 as it stood immediately before the commencement of this Act; and

(b) was entitled to receive public deposit,

shall be deemed to be the net owned fund required under this Act:

2 of 1934.

Provided further that the net owned fund held by a non-banking financial company, in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934, as it stood immediately before the commencement of this Act, which made an application for registration in accordance with the provisions of that section but has not been granted a certificate of registration before the commencement of this Act, shall be deemed to be the net owned fund required under this Act:

2 of 1934.

Provided also that a non-banking financial company, referred to in the first proviso and the second proviso having net owned fund of less than two hundred lakhs of rupees before the commencement of this Act, shall increase its net owned fund to such sums and within such time as may be specified by the Bank in this behalf.

(2) No financial company shall commence or carry on the business of a financial institution without—

(a) obtaining a certificate of registration under sub-section (2) of section 6; and

(b) having the owned fund of not less than twenty five lakhs of rupees or such other amount not exceeding two crores of rupees, as the Bank may, by notification, specify.

Provided that the net owned fund held, by a non-banking financial company, which has been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 shall be deemed to be the owned fund required under this sub-section:

2 of 1934.

Provided further that every non banking financial company which made an application for registration in accordance with the provisions of section 45-IA of the Reserve Bank of India, 1934, as it stood immediately before the commencement of this Act, but has not been granted a certificate of registration before the commencement of this Act, shall be required to have within six months on and from the commencement of this Act, owned fund in accordance with the provisions of sub-section (2).

2 of 1934.

Provided also that a non-banking financial company, referred to in the first proviso or the second proviso having owned fund of less than twenty-five lakhs of rupees before the commencement of this Act, shall increase its owned fund to such sums and within such time as may be specified by the Bank in this behalf under clause (b) of sub-section (2).

(3) The Bank may, by notification, specify, different amount of minimum net owned fund or owned fund, as the case may be, for different class or classes of financial companies.

8. (1) Every financial company, which receives or holds public deposits, shall invest and continue to invest in India,—

(a) in unencumbered term deposit with a scheduled bank, other than a co-operative bank or a regional rural bank; or

(b) in unencumbered approved securities valued at a price not exceeding the current market price of such securities,

an amount, which at the close of business on any day, shall not be less than such percentage not exceeding twenty-five per cent. as the Bank may, from time to time, by notification, specify, of the public deposits outstanding at the close of business on the last working day of the preceding month:

Provided that such investment in unencumbered term deposit shall not exceed five per cent. or such per cent. as the Bank may, by notification, specify from time to time:

Provided further that the Bank may, by notification, specify different percentages of investment in respect of different classes of financial companies.

Explanation.—For the purposes of this section, "public deposits" and "term deposit" shall include the amount of interest accrued on such deposits.

(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every such financial company to furnish a return to it in such form, in such manner and for such period, as may be specified by the Bank.

(3) If the amount invested by a financial company at the close of business on any day falls below the rate specified under sub-section (1), such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent month, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent month.

(4) (a) The penal interest under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the financial company and, in the event of a failure of the financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the Bank.

(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the financial company and every such certificate shall be enforceable in the same manner, as if, it were a decree made by the said court, in a suit.

(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

9. (1) Every financial company, which has received or receives public deposit, shall create a reserve fund and transfer therein a sum, not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(2) No appropriation of any sum from the reserve fund shall be made by the financial company except for the purpose, as may be specified by the Bank from time to time, and

Maintenance of assets.

Reserve fund.

every such appropriation shall be reported to the Bank within twenty-one days from the date of such appropriation:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Bank may, having regard to the adequacy of the paid-up capital and reserves of a financial company in relation to its liabilities to repay the public deposit, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the financial company for such period and to such extent, as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) is not less than the paid-up capital of the financial company.

(4) The Bank may, in the public interest or in the interest of the depositors, direct any such financial company or any class of financial companies to invest a part of such reserve fund not exceeding twenty-five per cent. of such fund in any specified unencumbered securities.

First charge over assets in favour of depositors.

10. In the event of a financial company making any default in repayment of public deposit, all the depositors, who made such public deposits, shall have a first charge over the assets maintained under section 8 and the specified unencumbered securities referred to in sub-section (4) of section 9.

Regulation of advertisement soliciting deposit.

11. The Bank may, if it considers necessary in the public interest so to do, by general or special order,—

(a) regulate or prohibit the issue by any non-banking institution, or in its name or on its behalf, of any prospectus or advertisement soliciting deposit; and

(b) specify, by notification, the conditions subject to which, any such prospectus or advertisement, if not prohibited, may be issued.

Power to call for information

12. (1) The Bank may, at any time, call for, from a financial institution or a class of financial institutions, any statement, information and particulars relating to conduct of business of the financial institution or the class of financial institutions in such form, at such intervals and within such time, as may be specified by the Bank by general or special order.

(2) Without prejudice to the generality of the powers vested in the Bank under sub-section (1), the statements, information or particulars to be furnished under that sub-section, may relate to all or any of the following matters, namely:—

(a) the amount of the deposits;

(b) the purposes and periods for which such deposits may be accepted;

(c) the rate of interest on such deposits;

(d) the other terms and conditions for receiving of such deposits;

(e) the paid-up capital, reserves or other liabilities;

(f) the investments, whether in Government securities or otherwise;

(g) the persons to whom, and the purposes and periods for which, finance is provided;

(h) the terms and conditions, including the rate of interest, on such finance is provided;

(i) the items of income and expenditure.

(3) The Bank may call for, at any time from a non-banking institution or a class of non-banking institutions any statement, information and particulars relating to conduct of business of the non-banking institution or the class of non-banking institutions in such form and within such time, as may be specified by the Bank by general or special order, for the purpose of ascertaining as to whether it is carrying on any business of a financial institution or for ascertaining whether prospectus or the advertisement soliciting deposit issued, if any, by it or in its name or on its behalf, is in public interest or in the interests of

the depositors or in the interest of the credit system of the country or for any matters relating thereto.

(4) It shall be the duty of every financial institution and non-banking institution to furnish the statements, information and particulars called for, and to comply with any order issued under this section to it in this behalf.

13. (1) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may determine the policy on any matter relating to or connected with the conduct of business of financial institution.

Power to determine policy.

(2) Without prejudice to the generality of the powers vested in the Bank under sub-section (1), the policy may be related to or connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit, income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance sheet items and also any of the matters referred to in sub-section (2) of section 12 including those relating to deployment of funds by a financial institution or a class of financial institutions generally, as the case may be and financial institutions shall be bound to follow the policy so determined.

14. (1) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may, at any time, issue directions to a financial institution or a class of financial institutions in respect of any matters relating to or connected with the conduct of business of financial institution.

Power to issue directions to financial institutions.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions relating to—

(a) any matter connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit;

(b) purpose for which advances or other fund based or non-fund based accommodation may not be made;

(c) maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the financial institution and other relevant considerations, which may be made by that financial institution to any person or a group of persons or a company or group of companies;

(d) any matter of policy referred to in section 13 or any matter relating thereto or connected therewith.

(3) Every financial institution shall, if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the financial institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts or any other information to every person from whom the financial institution holds, as on the last day of the year to which the accounts relate, public deposit higher than such sum as may be specified by the Bank.

(4) It shall be the duty of every financial institution to comply with any direction given to it under this section.

15. (1) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interests of the depositors or for the purpose of proper assessment of the records and books of account of a financial institution or a class of financial institutions,—

Power to issue directions to auditors and duties of auditors.

(a) issue directions to the auditor of a financial institution or class of financial institutions on any matter relating to balance-sheet, profit and loss account, disclosure of liabilities in the records and books of account;

(b) direct a financial company or class of financial companies to appoint auditor with the prior approval of the Bank for such period and subject to such conditions as the Bank may specify;

(c) appoint an auditor or auditors to conduct special audit of the accounts of a financial company in relation to any such transaction or class of transactions or such period, as may be specified in the order, and direct the auditor or the auditors to submit the report to it.

(2) The remuneration of the special auditors, as may be fixed by the Bank, having regard to the nature and volume of work involved in such audit and the expenses of or incidental to such audit, shall be borne by the financial company so audited.

(3) It shall be the duty of an auditor of a financial institution to inquire whether or not the financial institution has furnished to the Bank such statements, information or particulars as are required to be furnished under this Act and the auditor shall, except where he is satisfied on such inquiry that the financial institution has furnished such statements, information or particulars and complied with all the directions and orders issued by the Bank under this Act, make a report to it giving details of such defaults.

(4) Where, in the case of a financial company, the auditor has made, or intends to make, a report to the Bank under sub-section (3), he shall include in his report under sub-section (2) of section 227 of the Companies Act, 1956, the contents of the report which he has made, or intends to make to the Bank.

1 of 1956.

Power to prohibit receiving of deposit.

Power to prohibit alienation of assets.

16. If any financial company violates any provisions of this Act or fails to comply with any direction given or order issued by the Bank under this Act, the Bank may prohibit the financial company from receiving any deposit.

17. (1) The Bank may, on being satisfied that it is necessary so to do in the public interest or in the interests of the depositors, direct a financial company—

(a) against which an order prohibiting it from receiving deposit has been issued; or

(b) which has violated any provision of this Act or failed to comply with any direction given or order issued by the Bank under this Act,

not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets including the cash balance with it or the credit balance in its bank account; or not to increase the remuneration or honorarium or any benefit payable or extendable to its directors, advisors, consultants or employees or any person; or not to appoint any such personnel except for protection of its legal rights, properties and assets, without prior written permission of the Bank, for such period not exceeding one year from the date of the direction:

Provided that the Bank may after recording the reasons extend the said period from time to time:

Provided further that the period under this sub-section shall in no case exceed five years in the aggregate.

(2) Notwithstanding anything contained in any law for the time being in force, any alienation, of property or assets referred to in sub-section (1) by way of sale, mortgage or otherwise, made in contravention of the direction under that sub-section shall be void.

Power to appoint Special Officer.

18. (1) If the Bank is of the opinion that—

(a) the affairs of the financial company are being conducted in a manner prejudicial to the public interest or in any manner detrimental to the interest of the financial company or its depositors; or

(b) any order or direction issued by the Bank to a financial company under this Act has not been complied with, it may appoint one or more persons as Special

Officers to obtain the information regarding conduct and affairs of such company or to ensure compliance with the order or direction issued by the Bank for such period and on such terms and conditions as the Bank deems fit.

(2) In particular and without prejudice to the provisions contained in sub-section (1), the Special Officer may,—

- (a) call for any information connected with the affairs of the financial company and forward the same to the Bank;
- (b) identify the financial transaction of such financial company which would require or required approval of the Bank;
- (c) consider the application of the company where approval of the Bank is required, if so authorised by the Bank in respect of such financial transactions;
- (d) approve, in consultation with the Bank, the mode of investment;
- (e) perform such other functions as may be specified by the Bank.

(3) It shall be the duty of every financial company referred to in sub-section (1) to afford the Special Officer necessary facility to check or verify cash, stocks, securities or such other valuable articles or things or records, books of account and furnish such other information relating to any matter which may be useful or relevant in discharge of his duties.

19. (1) The Bank may, at any time, cause an inspection to be made by an inspecting authority consisting of one or more of its officers or employees or other persons (hereafter in this section referred to as the inspecting authority)—

Inspection.

- (a) of any financial institution, if the Bank considers it necessary or expedient to inspect that financial institution; or
- (b) of any non-banking institution for the purposes of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank or for the purpose of obtaining any information or particulars which has not been furnished or for determining whether the non-banking institution is a financial institution.

(2) It shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the financial institution or the non-banking institution, as the case may be, or other officer or employee thereof to produce before the inspecting authority all such records, books, accounts and other documents in his custody or power and to furnish to that authority with any statement and information relating to the business of the institution as the inspecting authority may require of him, within such time as may be specified by the inspecting authority.

(3) The inspecting authority may, examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the financial institution or the non-banking institution or other officer or employee thereof, in relation to conduct of its business and may administer an oath accordingly.

20. No financial company, which has been granted a certificate of registration under sub-section (4) of section 6, shall carry on, without prior approval of the Bank, any business other than the business of financial institution:

Certain financial companies not to carry on other business.

Provided that a financial company, or a non-banking financial company, which is carrying on any business other than the business of financial institution on or before the commencement of this Act, shall cease to carry on any such business within three years from the date of commencement of this Act.

Explanation.—For the purposes of this section, the business carried on by a financial company or a non-banking financial company shall not include the business carried on by its subsidiary.

21. No person shall solicit on behalf of any financial institution, either by publishing or causing to be published any prospectus or advertisement or in any other manner, deposits of money from the public unless—

Deposits not to be solicited by unauthorised persons.

(a) he has been authorised in writing by the said financial institution to do so and specifies the name of the institution which has so authorised him, and

(b) the prospectus or advertisement complies with any order made or direction issued by the Bank under this Act or with the requirement of any other provision of law for the time being in force, applicable to the publication of such prospectus or advertisement.

22. (1) Any information relating to a financial institution,—

(a) contained in any statement or return submitted by such institution under the provisions of this Act; or

(b) obtained through audit or inspection or otherwise by the Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any financial institution, with the previous permission of the Bank, of any information referred to in sub-section (1);

(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information referred to in sub-section (1) in such consolidated form, as it may think fit, without disclosing the name of any financial company or its borrowers;

(c) the disclosure or publication by the financial institution or by the Bank of any such information to any other financial institution or its borrowers in accordance with the practice and usage customary amongst such financial institutions or as permitted or required under any other law:

Provided that a financial institution shall not publish, except in accordance with the practice and usage customary amongst financial institutions or as permitted or required under any law, any information referred to in sub-section (1).

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interests of the depositors or the financial institution or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any financial institution to any authority constituted under any law.

(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Act.

CHAPTER IV

REDRESSAL OF DEPOSITORS GRIEVANCES

23. Every public deposit accepted by a financial company shall, unless renewed, be repaid in accordance with the terms and conditions of such deposit.

24. (1) Where a financial company has failed to repay any public deposit or part thereof to a depositor, in accordance with the terms and conditions of such deposit, the depositor may make an application to the Board.

(2) Every application under sub-section (1) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of deposit due to be recovered.

(3) On receipt of the application under sub-section (1), the Board shall issue summons requiring the financial company to show cause within twenty days of the service of summons as to why the relief prayed for should not be granted.

Disclosure
of infor-
mation
prohibited.

Repayment
of public
deposit.

Application
to Board and
functions of
Board.

(4) The financial company shall, at or before the first hearing or within such time as the Board may permit, present a written statement of its defence.

(5) Where the financial company claims to set off against the depositors' demand any ascertained sum of money legally recoverable by him from such depositor, the financial company may, at the first hearing of the application, but not afterwards unless permitted by the Board, present a written statement containing the particulars of the debt sought to be set-off.

(6) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Board to pass a final order in respect of the original claim and of the set-off, if any.

(7) A financial company in an application may, in addition to its right of pleading a set-off under sub-section (5), set up, by way of counter-claim, including its claim in the nature of damages, against the claim of the depositor, any right or claim in respect of a cause of action accruing to the financial company against the depositor either before or after the filing of the application but before the financial company has delivered its defence or before the time for delivering its defence has expired.

(8) A counter-claim under sub-section (7) shall have the same effect as a cross-suit so as to enable the Board to pass a final order on the same application, both on the original claim and on the counter-claim.

(9) The depositor shall be at liberty to file a written statement in answer to the counter-claim of the financial company within such period as may be fixed by the Board.

(10) Where a financial company sets up a counter-claim and the depositor contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the depositor may, at any time before issues are settled in relation to the counter-claim, apply to the Board for an order that such counter-claim may be excluded, and the Board may, on the hearing of such application, make such order as it thinks fit.

(11) The Board may make an interim order, whether by way of injunction or stay or attachment, against the financial company to debar it from transferring, alienating or otherwise dealing with, or disposing of, any property and asset belonging to it without the prior permission of the Board.

(12) (A) Where, at any stage of the proceedings, the Board is satisfied, by affidavit or otherwise, that the financial company, with intent to obstruct or delay or frustrate the execution of any order for the recovery of unpaid public deposit that may be passed against it,—

(i) is about to dispose of the whole or any part of its property or assets; or

(ii) is about to remove the whole or any part of its property from the local limits of the jurisdiction of the Board; or

(iii) is likely to cause any damage or mischief to the property or assets or affect its value by misuse or creating third party interest,

the Board may direct the financial company, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, or to produce and place at the disposal of the Board, when required, the said property or assets or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of unpaid public deposit, or to appear and show cause why it should not furnish security.

(B) Where the financial company fails to show cause why it should not furnish security, or fails to furnish the security required, within the time fixed by the Board, the Board may order the attachment of the whole or such portion of the properties or assets of the financial company as appears to it to be sufficient to satisfy any certificate for the recovery of unpaid public deposit.

(13) The depositor shall, unless the Board otherwise directs, specify the property or assets required to be attached and the estimated value thereof.

(14) The Board may also in the order direct the conditional attachment of the whole or any portion of the property or assets specified under sub-section (13).

(15) If an order of attachment is made without complying with the provisions of sub-section (12), such attachment shall be void.

(16) The Board may, after giving the depositor and the financial company an opportunity of being heard, determine the amount of deposits due and pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, within such time or in such manner as the Board thinks fit to meet the ends of justice.

(17) The Board shall send a copy of every order passed by it to the applicant and the financial company.

(18) If any financial company fails to comply with an order passed by the Board under sub-section (16), the Board may appoint one or more Recovery Officers and issue a certificate to the Recovery Officer for recovery of the amount of unpaid public deposit specified in the certificate.

(19) In the case of disobedience of an order made by the Board under sub-section (11) or sub-section (12) or under sub-section (16) or sub-section (20) or breach of any of the terms on which the order was made, the Board may order the properties and assets of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Board directs his release.

(20) Where it appears to the Board to be just and convenient, the Board may, by order—

(a) appoint a receiver of any property or assets, whether before or after grant of certificate for recovery of unpaid public deposit;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Board and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Board thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the financial company or for the sale thereof.

(21) The application made to the Board under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of application.

(22) The Board may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Right to legal representation.

25. The depositor or the financial company may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case under this Act before the Board.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause

(b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

23 of 1959. (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, Vakil or an attorney of any High Court, and includes a pleader in practice.

36 of 1963. 26. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to the Board.

Limitation

45 of 1860. 27. The members, officers and other employees of the Board and the Recovery Officer and Receiver shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers and other employees of Board to be public servants.

Civil court not to have jurisdiction.

28. No civil court (except the Supreme Court or a High Court exercising jurisdiction under article 226 or 227 of the Constitution) shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine and no injunction shall be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

29. Any person aggrieved by any decision or order of the Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Board to him on any question of fact or law arising out of such order:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within a further period not exceeding sixty days.

30. The Recovery Officer shall, on receipt of the certificate issued under sub-section (18) of section 24, proceed to recover the amount of unpaid public deposit specified in the certificate by one or more of the following modes, namely:—

Modes of recovery of unpaid public deposit.

(a) attachment and sale of movable or immovable property of the financial company or any other person against whom the order is passed;

(b) arrest of any person, who at the time of receiving public deposit or default in repayment thereof was incharge of and was responsible to the financial company for the conduct of business of the financial company, and his detention in prison.

31. (1) It shall not be open to the financial company to dispute before the Recovery Officer the correctness of the amount specified in the certificate and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

Validity of certificate and amendment thereof.

(2) Notwithstanding the issue of certificate to a Recovery Officer, the Board shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The Board shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by it under sub-section (2).

32. (1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Board may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

Stay of proceedings under certificate and amendment or withdrawal thereof.

(2) Where a certificate for the recovery of amount has been issued, the Board shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

(3) Where the order giving rise to demand of amount for recovery of unpaid public deposit has been modified in appeal, and, as a consequence thereof the demand is reduced, the Board shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

(4) Where the amount of unpaid public deposit is reduced or enhanced as a result of an appeal, the Board shall, when the order which was the subject matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Other modes of recovery.

33. (1) Where a certificate has been issued to the Recovery Officer under sub-section (18) of section 24, the Recovery Officer may, without prejudice to the modes of recovery specified in section 30, recover the amount of unpaid public deposit by any one or more of the modes provided under this section.

(2) (a) The Recovery Officer may, at any time by notice in writing, require any person from whom money is due or may become due to the financial company or to any person who holds or may subsequently hold money for or on account of the financial company, to pay the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of public deposit payable by the financial company or the whole of the money when it is equal to or less than that amount.

(b) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the financial company jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(c) A copy of the notice shall be forwarded to the financial company at its registered office.

(d) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purposes for any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(e) Any claim in respect of any property or assets in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(f) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the financial company or that he does not hold any money for or on account of the financial company then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the financial company's liability for any sum due under this Act, whichever is less.

(g) The Recovery Officer may, at any time or from time to time amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(h) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the financial company to the extent of the amount so paid.

(i) Any person discharging any liability to the financial company after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the financial company so discharged or to the extent of the financial company's liability for any public deposit due under this Act, whichever is less.

(j) If a person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, such person shall be liable for the payment of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an unpaid deposit due from him, in the manner provided in this Act and the notice shall have the same effect as an attachment of a public deposit by the Recovery Officer in exercise of his powers under section 30.

(3) The Recovery Officer may apply to the court in whose custody there is money belonging to the financial company for payment to him of the entire amount of such money, or if it is more than the amount of public deposit due an amount sufficient to discharge the amount of public deposit so due.

(4) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.

(5) The Recovery Officer may recover any amount of public deposit due from the financial company by distress and sale of his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

43 of 1961.

43 of 1961.

34. The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of unpaid public deposit under this Act instead of to the Income-tax:

Application of certain provisions of Income-tax Act, 1961.

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the financial company under this Act.

35. (1) Notwithstanding anything contained in section 34, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him prefer an appeal to the Board.

Appeal against order of Recovery Officer.

(2) On receipt of an appeal under sub-section (1), the Board may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 30 to 34 (both inclusive).

CHAPTER V

WINDING UP

36. Where,—

(a) a financial company has, by virtue of section 6 or section 7 become disqualified to carry on the business of financial institution or from accepting public deposit; or

Power of Bank to file winding up petition.

(b) a financial company has been prohibited by the Bank from receiving public deposit and such prohibition continues for a period of three months or more; or

(c) the Bank is satisfied that—

(i) a financial company is unable to pay its debt; or

(ii) the continuance of a financial company is detrimental to public interest or the interests of the depositors of the financial company,

the Bank may, file an application for winding up of such financial company under the Companies Act, 1956 or under any other law for the time being in force.

(2) A financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 or any other law for the time being in force relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.

1 of 1956.

1 of 1956.

CHAPTER VI

PROHIBITION FROM ACCEPTANCE OF PUBLIC DEPOSITS BY UNINCORPORATED BODIES

Public deposit not to be accepted in certain cases.

37. (1) No person, being an individual or an unincorporated association of individuals shall accept any public deposit—

- (a) if his or its business, wholly or partly includes any of the businesses of financial institution as contained in clause (e) of sub-section (1) of section 2; or
- (b) if his or its business is that of receiving public deposits under any scheme or arrangement or in any other manner, or lending in any manner:

Provided that nothing contained in this sub-section shall apply to the receipt of money by way of loan by an individual from any of his relatives, or by an unincorporated association from any of the relatives of the individuals constituting it.

(2) Where any person referred to in sub-section (1) holds any public deposit on the date of commencement of this Act, which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within one year from the date of such commencement, whichever is earlier.

(3) No person, being an individual, or an unincorporated association of individuals shall, issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.—For the purpose of this section, a person shall be deemed to be a relative of another if, and only if,—

- (a) they are members of a Hindu undivided family; or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in the list of relatives below:—

List of relatives

1. Father, 2. Mother (including step-mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.

Power of District Magistrate to call for information.

38. If the District Magistrate has reason to believe that any individual or unincorporated association of individuals has contravened or is contravening the provisions of section 37, he may call from such individual or unincorporated association of individuals any information relating to acceptance of public deposit or repayment thereof or cause an inspection of the records, books of account and documents and take such action as he deems fit.

CHAPTER VII

GENERAL PROVISIONS

Central Government's power to give direction.

39. (1) The Central Government may, from time to time, give such direction to the Bank as it may, after consultation with the Governor of the Bank, consider it necessary in the public interest.

(2) The Central Government may, from time to time, require the Bank to furnish such returns, statements and such other particulars in regard to any proposed or existing measures for regulation of financial institutions, in such form and in such manner as the Central Government may specify, and the Bank shall furnish to the Central Government such returns, statements and particulars.

40. The Bank on being satisfied that in the public interest, or in the interests of the depositors, or in the interest of the financial institution, it is necessary so to do, may declare by notification, that any or all of the provisions of this Act, shall not apply to a financial institution or a class of financial institutions or a financial company, or to any class of financial companies either generally or for such period as may be specified in the notification, subject to such conditions, limitations or restrictions as it may think fit to impose.

Power to exempt.

41. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or the Bank or the Special Officer or any other person for anything, which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation or direction made or issued thereunder.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the Bank or the liquidator or the Special Officer or any of their officers or employees or authorised person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation or direction made or issued thereunder.

(3) No member of the Advisory Council including the Chairperson and *ex officio* member shall incur any liability for tendering any advice to the Bank and no action shall lie against them in respect of any such advice.

42. (1) Where a public deposit is held by a financial company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner as may be prescribed, one person to whom, in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the financial company.

Nomination by depositor.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made under sub-section (1) purports to confer on any person the right to receive the amount of public deposit from a financial company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositors, or as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner as may be prescribed:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner as may be prescribed, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a financial company in accordance with the provisions of this section shall constitute a full discharge to the financial company of its liability in respect of the deposit.

(5) No notice of claim of any person, other than the person or persons in whose name a deposit is held by a financial company, shall be receivable by the financial company, nor shall the financial company be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a financial company, the financial company shall take due note of such decree, order, certificate or other authority.

CHAPTER VIII

PENALTIES

Penalties.—

(1) Whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act, or any order, rules, regulations or direction made or given thereunder or in any prospectus or advertisement issued for or in connection with the invitation by any person, of deposits of money from the public wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any record, book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, it is his duty to produce or furnish or to answer any question put to him in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, he shall be punishable with fine which may extend to ten thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one thousand rupees for every day after the first during which offence continues.

(3) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to one thousand rupees, or with both.

(4) If any person contravenes the provisions of section 6 or section 7, he shall be punishable with imprisonment for a term, which shall not be less than one year but which may extend to five years and with fine, which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(5) If any auditor fails to comply with any direction given or order made by the Bank under section 15, he shall be punishable with fine, which may extend to ten thousand rupees.

(6) Whoever, fails to comply with any order made by the Board, he shall be punishable with imprisonment for a term, which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.

(7) If any person,—

(a) receives any public deposit in contravention of any direction given or order made by the Bank in exercise of the powers under this Act; or

(b) fails to comply with any direction given or order made by the Bank under any of the provisions of this Act; or

(c) issues any prospectus or advertisement otherwise than in accordance with section 21 or any order made or direction given by the Bank under this Act,

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,—

(a) in the case of a contravention falling under clause (a), to twice the amount of the public deposit received; and

(b) in the case of a contravention falling under clause (c), to twice the amount of the public deposit called for by the prospectus or advertisement or one lakh rupees, whichever is more.

(8) If any person contravenes the provisions of section 37, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to twice the amount of public deposit received by such person in contravention of that section, or fifty thousand rupees, whichever is more, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than ten thousand rupees.

(9) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, rules or regulations or direction made or given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with further fine, which may extend to one thousand rupees for every day after the first, during which the contravention or default continues and with imprisonment for a term not exceeding three years or with both.

(10) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for a Metropolitan Magistrate or Judicial Magistrate of the First Class to impose a sentence or fine in excess of the limit specified in that section on any person convicted under this section.

44. (1) Where a person committing a contravention or default referred to in section 43 is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default.

Offences by companies.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer or employee of the company, such director, manager, secretary or other officer or employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation 1.—For the purpose of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office of the financial company is situated or in the case of financial company incorporated outside India where its principal place of business in India, is situated.

Explanation 2.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

2 of 1974.

45. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under sub-sections (4), (6), clause (a) of sub-section (7) and sub-section (8) of section 43 shall be cognizable and no Court, inferior to that of a Chief Metropolitan Magistrate or as the case may be, Judicial Magistrate of the First Class or a Court superior thereto shall try any offence punishable under this Act.

Cognizance of offences.

(2) Save as those enumerated under sub-section (1), no court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by an officer of the Bank, generally or specially authorized in writing in this behalf by the Bank, and no Court other than that of a Chief Metropolitan Magistrate or a Judicial Magistrate of the First Class or the Court superior thereto shall try such offence.

2 of 1974.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Magistrate if he sees reason so to do, may dispense with the personal attendance of the

officer of the Bank filing the complaint, but the Magistrate may, in his discretion at any stage of the proceedings, direct the personal attendance of the complainant.

(4) A court, imposing any fine under this Act, may direct that the whole or any part thereof shall be applied in, or towards payment of, the costs of the proceedings incurred by the Bank.

(5) It shall be lawful for any Police Officer, if authorised by an officer not below the rank of Superintendent of Police,—

(a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the conduct of any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(b) to search the said premises and the persons whom he may find therein;

(c) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(d) to seize all things found in the said premises or elsewhere which are intended to be used, or reasonably suspected to have been used, in connection with any such activities as aforesaid;

(e) to examine any person having control of, or employed in connection with, any activities as aforesaid or any person connected with such activities;

(f) to order the production of any document, book or record in the possession or power of any person having the control of, or employed in connection with, any activities as aforesaid;

(g) to inspect and seize any records, register, books of account, documents or any other literature found in the said premises; and

(h) to submit necessary report for the purpose of taking any action against any such person for violation of any of the offences specified under sub-section (1).

(6) The provisions of the Code of Criminal Procedure, 1973 shall, apply insofar as they are not inconsistent with the provisions of this Act, to the searches and seizures made under this Act.

2 of 1974.

Power of
Bank to
impose
penalty

46. (1) Notwithstanding anything contained in section 45, if a contravention or default other than those contained in sub-section (1) of that section, is committed by a financial company, the Bank may, impose on such financial company, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which a notice issued by the Bank demanding payment is served on the financial company and, in the event of failure of the financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where, the registered office or the principal place of business of the financial company is situated:

Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf.

(4) The Court, which makes a direction under sub-section (3), shall issue a certificate, specifying the sum payable by the financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any financial company in any court pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a financial company in a court in respect of contravention or default of the nature referred to in section 45, no proceedings for imposition of penalty against that financial company shall be taken under this section.

CHAPTER IX

POWER TO MAKE RULES, REGULATIONS AND AMENDMENT OF RESERVE BANK OF INDIA ACT

47. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of application, the documents and the fee which shall accompany such application under sub-section (2) of section 24;

(b) the manner of nomination of one person by the depositors under sub-section (1) of section 42;

(c) the manner of varying or cancelling the nomination in the event of death of the sole depositor or all the depositors under sub-section (2) of section 42;

(d) the manner in which a minor nominee may be made under sub-section (3) of section 42; and

(e) any other matter which is to be or may be, prescribed, or in respect of which provision is to be made or may be made by rules.

48. (1) The Bank may, by notification, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) determination of time, place and observation of such rules and procedures in regard to transaction of business at the meetings of the Advisory Council under sub-section (5) of section 3;

(b) the fees and allowances to be made to the nominated members, the manner of filling up of vacancies and the procedure to be followed in discharge of their functions under sub-section (8) of section 3;

(c) the period within which the recommendations shall be made by the Advisory Council to the Bank under sub-section (2) of section 4.

49. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

Act not to apply in certain cases.

50. The provisions of this Act shall not apply to the State Bank of India or a banking company as defined in section 5 of the Banking Regulation Act, 1949 or a corresponding new bank as defined in clause (da) of section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 or a Regional Rural Bank or a co-operative bank or a primary agricultural credit society or a primary credit society or an insurance company registered under the Insurance Act, 1938 or a company registered as a stock broker under the Securities and Exchange Board of India Act, 1992 or a company registered as merchant banker under the Securities and Exchange Board of India Act, 1992 or a housing finance institution which is a company registered under the National Housing Bank Act, 1987.

10 of 1949.

Provisions of this Act to override other laws

51. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

38 of 1959.

Power to remove difficulties.

52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

4 of 1938.

Repeal of certain provisions of Reserve Bank of India Act, 1934 and savings.

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

15 of 1992.

(2) Every order made under this section shall be laid, as soon as may be after it is made before each House of Parliament.

53 of 1987.

53. (1) Sections 45H to 45T, sub-sections (4A), (4AA), (4AAA), (5), (5A) and (5B) of section 58B, proviso to sub-section (1) of section 58-E and section 58G of the Reserve Bank of India Act, 1934 are hereby repealed.

2 of 1934.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Act shall, in so far as such things or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of the Act as if the said provisions were in force when such things was done or such action was taken and shall continue in force accordingly until superceded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The activities of the non-banking institutions and unincorporated bodies receiving deposits are regulated in terms of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934. The Reserve Bank of India Act, 1934 was amended in 1997 to provide several safeguards for the Non-Banking Financial Companies (NBFCs) so as to ensure their viability. Some of such safeguards, *inter alia*, are compulsory registration of the NBFCs with the Reserve Bank of India (RBI), stipulation of minimum requirement of net-owned funds, creation of reserve fund and transfer of certain percentage of profits every year to the fund and prescription of liquidity requirement, issuing directions by the RBI encompassing aspects, such as, income recognition, accounting standards, provision for bad and doubtful debts, capital adequacy to ensure sound and healthy operations and the quality of assets of these companies, issuing directions to the auditors of the NBFCs, special audit of, the NBFCs, prohibition of acceptance of deposits by, the NBFCs, vesting powers with the Company Law Board for directing the defaulting NBFCs to make repayment of deposits.

2. Despite provision for above safeguards, it was felt that the existing provisions contained in the Reserve Bank of India Act, 1934 were not adequate because of the large number of defaulting NBFCs and the absence of an efficient and quick system for redressal of grievances of individual depositors. The Central Government appointed a Task Force on the NBFCs, *inter alia*, to go into the adequacy of the present legislative framework, to devise improvements in the procedure relating to depositors' complaints and to examine the need for separate regulatory agency. The Task Force considered various suggestions received from the NBFCs, representative organisations of the NBFCs, depositors' associations, State Governments and others and made wide ranging recommendations. While some of the recommendations of the Task Force have been given effect to through issue of directions by, the RBI under the provisions of the Reserve Bank of India Act, 1934, the implementation of other recommendations requires statutory provisions to be made by an Act of Parliament.

3. To give effect to the recommendations of the Task Force and to remove certain difficulties in the administration of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934, the Central Government has decided to enact a new legislation incorporating therein the provisions contained in the said Chapters of the Reserve Bank of India Act, 1934 with certain modifications and certain new safeguards to protect the interests of the depositors and regulate the financial institutions in a more effective manner. The salient features of the proposed legislation are as follows:—

- (a) constitution of an Advisory Council consisting of Deputy Governor, RBI as the Chairperson and other members of the Council to advise and make recommendations on matters referred to it by the RBI;
- (b) compulsory registration of all financial companies with the RBI;
- (c) requirement of prior approval of the RBI for any substantial change in the management, change in location of its registered office and change in name of a financial company;
- (d) enhancement in the ceiling of minimum net owned fund required for registration of a financial company receiving public deposits being raised from rupees two crores to rupees ten crores;
- (e) provision requiring owned funds for registration of every financial company which does not receive public deposits with a minimum owned fund of rupees twenty-five lakhs which may be raised to rupees two crores by the RBI;

(f) creation of reserve fund and investment of twenty-five percent. of such fund in specified unencumbered securities;

(g) provision for depositors to have first charge on certain assets of the financial companies which may default in repayment of public deposits and specified unencumbered securities created out of a part of reserve fund;

(h) regulating, or prohibiting from issuing advertisement by any non-banking institution;

(i) conferring powers upon the RBI to direct a financial company or a class of financial companies to seek prior approval for appointment of statutory auditors in certain cases;

(j) empowering the RBI to appoint one or more Special Officers;

(k) prohibition of financial companies receiving public deposits for carrying on business other than the business of financial institution;

(l) giving more powers to Board for Company Law Administration constituted under the Companies Act, 1956 for redressal of depositors' grievances;

(m) conferring upon the Board the powers prohibiting alienation of assets by financial companies and attachment and sale of assets of the financial company for effecting repayment of the deposits;

(n) prohibiting all unincorporated bodies from issuing advertisement in any manner for soliciting public deposits;

(o) making certain offences relating to unauthorised acceptance of public deposits as cognizable offences;

(p) making acceptance of public deposits by unincorporated bodies as a cognizable offence.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

The 30th November, 2000.

YASHWANT SINHA.

Notes on Clauses

Clause 1.— This clause, *inter alia*, seeks to extend the provisions of the Bill to the whole of India, including the State of Jammu and Kashmir.

Clause 2.— This clause defines the various expressions occurring in the Bill.

Clause 3.— This clause provides for constitution of an Advisory Council for Financial Institutions which shall consist of a Deputy Governor of the Bank nominated by the Governor as Chairperson, such number of members not exceeding three to be nominated by the Bank from amongst the persons having special knowledge of banking, law, accountancy, business management, transport sector, investment, marketing, conduct of business of financial institutions; not more than four members to be nominated by the Bank from amongst the representatives of associations of Financial Institutions, depositors' associations, if any, and any other person having special knowledge of, and the professional experience in, the area which, in the opinion of the Bank, would be useful to the Bank in administration of the provisions of this Bill and the Chief General Manager incharge of the department administering the provisions of this Bill as *ex officio* member. It is further provided that the term of the office of the Chairperson and the *ex officio* member of the Advisory Council shall be co-terminus with their term as Deputy Governor or Chief General Manager, as the case may be. The members of the Advisory Council nominated under this clause except the Chairperson and *ex officio* member shall hold office for such term not exceeding five years or such period as the Bank may specify in this behalf. Further any person so nominated shall be eligible for re-nomination. This clause also empowers the Advisory Council to make regulations on the procedure in regard to transaction of business of the meeting of the Advisory Council and the fee and allowances payable to the nominated members of the Advisory Council to attend such meetings.

Clause 4.— This clause lays down the functions of the Advisory Council as may be specified in the regulations. It provides for the Advisory Council to advise on any issue referred to it by the Bank and make recommendations thereon to the Bank.

Clause 5.— This clause lays down the various disqualifications for being nominated as a member of the Advisory Council.

Clause 6.— This clause provides for registration of financial companies. This clause, *inter alia*, requires that every financial company shall be required to obtain a certificate of registration for commencing or carrying on the business of financial institution. However, a non-banking financial company, which has been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 as it immediately stood before the commencement of the proposed legislation, shall be deemed to have obtained certificate of registration under this clause. This clause also provides that no financial company can receive or hold public deposit unless such company has been authorised by the Bank and such authorisation is recorded by the Bank in its certificate of registration. This clause also provides that every financial company shall make an application for registration in such form as may be specified by the Bank. It also provides for the requirements and procedure for grant of certificate of registration under certain circumstances specified under this clause. Any financial company aggrieved by an order of rejection of application for registration or cancellation of certificate of registration or revocation of authorisation for receiving public deposits may prefer an appeal within thirty days from the date of such order of rejection or cancellation to the Central Government. The Central Government before making any order on such appeal shall give a reasonable opportunity of being heard to the appellant.

Clause 7.— This clause prescribes the requirement of minimum owned fund and the minimum net owned fund to be held by a financial company entitling it to have a certificate of registration and authorising such company to receive public

deposits as the case may be. This clause is on the lines of the provisions of section 45-IA of the Reserve Bank of India Act, 1934 so far it relates to the requirement of net owned fund. This clause also empowers the Reserve Bank to specify different amount of minimum owned fund or net owned fund, as the case may be, for different class of financial companies.

Clause 8.— This clause provides for the maintenance of assets by every financial company in accordance with the conditions specified in this clause. This clause is similar to section 45-IB of the Reserve Bank of India Act, 1934 but the requirement of maintenance of assets shall be applicable only to the financial companies receiving or holding public deposits.

Clause 9.— This clause provides that every financial company, which has received or receives public deposit, shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account. The aforesaid reserve fund shall not be utilised by the financial company except for the purpose which may be specified by the Bank from time to time. Further the Bank may also impose certain restrictions or conditions in respect of utilisation of such reserve fund including investment in specified unencumbered securities. The Reserve Bank may however exempt a financial company from creation of the reserve fund as specified in this clause.

Clause 10.— This clause seeks to create a statutory first charge in favour of all the depositors of a financial company which has failed to repay the deposit, over the assets maintained under clause 8 and the assets invested as per sub-clause (4) of clause 9.

Clause 11.— This clause seeks to provide for regulation of advertisement soliciting deposit. It is on the lines of the provisions contained in section 45J of the Reserve Bank of India Act, 1934.

Clause 12.— This clause empowers the Bank to call for any statement, information and particulars relating to conduct of business of financial institutions or class of Financial Institutions as may be specified by the Bank, by general or special order.

Clause 13.— This clause empowers the Bank in the public interest or in the interest of the depositors to determine the policy on any matter relating to or connected with the conduct of business of Financial Institutions. Such policy may also include the matters relating to receipt of public deposits, and rate of interest thereon, etc.

Clause 14.— This clause empowers the Bank to issue directions to a Financial Institution and making compliance thereof by the financial institution as obligatory.

Clause 15.— This clause empowers the Bank when it is satisfied that it is necessary to do so, to direct any Financial Institution or class of Financial Institutions to appoint, with its prior approval, auditors or special auditors for conducting special audits. This clause also empowers the Bank to issue directions to auditors and fix the remuneration payable to special auditors.

Clause 16.— This clause empowers the Bank to prohibit any financial company from receiving any deposit if it violates any provision of this Bill or any directions issued or orders made thereunder.

Clause 17.— This clause empowers the Bank to prohibit a financial company from alienation of its assets under certain circumstances.

Clause 18.— This clause empowers the Bank to appoint a Special Officer under certain circumstances in respect of a financial company and it makes obligatory on the part of such financial company to afford all necessary facilities to the Special Officer for performance of his duties specified in this clause.

Clause 19.— This clause empowers the Bank to inspect any financial institution under certain circumstances. This clause is on the lines of provisions contained in section 45N of the Reserve Bank of India Act, 1934.

Clause 20.—This clause, *inter alia*, provides that a financial company, which has been granted certificate of registration under the provisions contained in the Bill, without prior approval of the Bank, shall not carry on any business other than the business of financial institution. However, a financial company, which is carrying on the business other than the business of financial institution, shall cease to carry on such other business within three years from the date of commencement of the proposed legislation.

Clause 21.—This clause seeks to prohibit any person from soliciting deposit without being specifically authorised to do so. This provision is on the lines of the provisions contained in section 45NA of the Reserve Bank of India Act, 1934.

Clause 22.—This clause seeks to prohibit the disclosure of information relating to a financial institution. This provision is on the lines of the provisions contained in section 45NB of the Reserve Bank of India Act, 1934.

Clause 23.—This clause makes the contractual obligation of repayment of deposit as a statutory obligation, which is on the lines of the provisions contained in sub-section (1) of section 45QA of the Reserve Bank of India Act, 1934.

Clause 24.—This clause, *inter alia*, contains provisions to ensure repayment of public deposits or part thereof not paid by a financial company to the depositor. If a financial company fails to repay any public deposit or part thereof to a depositor in accordance with the terms and conditions of the deposits, the depositors can file an application in the prescribed form and manner to the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956. The Board is proposed to be empowered to pass such interim or final orders as it deems fit including attachment of properties and realisation of money by sale of such properties belonging to the financial company which makes a default in repayment of deposits to the depositors. The Board can prohibit such defaulting financial company from alienation of any of its assets. This clause also empowers the Board to appoint Recovery Officer, receivers and commissioners to ensure effective realisation of assets of such defaulting financial company. In case of disobedience of an order made by the Board, the Board can order that the properties and the assets of the person guilty of such disobedience should be attached and such person be detained in civil prison for a term not exceeding three months.

Clause 25.—This clause provides for right to legal representation in the proceedings before the Board either in person or by chartered accountant, company secretary, cost accountant, legal practitioner or any officer of the financial company.

Clause 26.—This clause seeks to apply the provisions of the Limitation Act, 1963 in relation to applications made to the Board.

Clause 27.—This clause seeks to provide that the member, officers and other employees of the Board, the Recovery Officer and receiver shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 28.—This clause seeks to exclude the jurisdiction of civil courts (except the jurisdiction of the Supreme Court or High Court exercising jurisdiction under article 226 or article 227 of the Constitution) to entertain any suit or proceeding in respect of any matter which the Board is empowered to determine. It also provides that no court or authority shall grant injunction in respect of any action taken in pursuance of the powers conferred under the Bill.

Clause 29.—This clause provides that a person aggrieved by an order or decision made by the Board may prefer an appeal to the High Court within sixty days from the date of communication of the decision or order of the Board on any question of fact or law. Further, if the appellant is prevented by sufficient cause from filing the appeal within the said period, the High Court may allow the appeal to be filed within a further period not exceeding sixty days.

Clause 30.— This clause seeks to empower the Recovery Officer to effect recovery of unpaid public deposits through the modes of attachment and sale of movable or immovable property and arrest of any person, who at the time of receiving public deposit or default in repayment was incharge of and was responsible to the financial company, and his detention in prison.

Clause 31.— This clause seeks to provide that the financial company being defendant cannot dispute before the Recovery Officer the amount specified in the certificate issued by the Board. The Board shall, however, have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

Clause 32.— This clause provides for stay of proceedings under certificate and amendment or withdrawal thereof. It provides that the Board may grant time for the payment of the amount specified in the certificate issued to the Recovery Officer. The Recovery Officer shall, thereupon, stay the proceedings of recovery until the expiry of the time so granted. It is further provided that if on appeal the unpaid public deposit is reduced, the Board shall stay the recovery of such part of the amount for the period for which the appeal remains pending. In case the amount of the outstanding demand is reduced on appeal, the Board shall, amend the certificate or withdraw it, as the case may be.

Clause 33.— This clause seeks to make provisions for different modes of recovery of unpaid public deposits by the Recovery Officer. The Recovery Officer can recover the amount of unpaid public deposits out of the monies due from any person to financial company which made a default in repayment of public deposits and such person shall comply with the orders of the Recovery Officer and pay the amounts so due to the credit of the Recovery Officer. Once a notice has been issued by the Recovery Officer to any person, any claim in respect of any property in relation to which such notice has been issued, shall be void. Any person discharging any liability to financial company after the receipt of such notice shall be personally liable to the Recovery Officer to the extent of his own liability to financial company so discharged or to the extent of the financial company's liability for any deposit due, whichever is less. The Recovery Officer may also apply to the court in whose custody there is money belonging to the financial company for payment to him of the entire amount of such money, or if it is more than the amount of public deposit due, an amount sufficient to discharge the amount of debt so due. The Recovery Officer may recover any amount of deposit due from the financial company by distraint and sale of its movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

Clause 34.— This clause seeks to apply the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 with necessary modifications for the recovery of unpaid public deposits.

Clause 35.— This clause seeks to provide that any order made by the Recovery Officer in exercise of his powers under this Bill shall be deemed to have been made by the Board so that an appeal against the order can be made to the High Court.

Clause 36.— This clause seeks to empower the Bank to file winding up petition of a financial company on the grounds specified in this clause. This provision is on the lines of the provisions contained in section 45MC of the Reserve Bank of India Act, 1934. All the other provisions of the Companies Act, 1956 or any other law for the time being in force, relating to winding up of a company will be applicable.

Clause 37.— This clause seeks to prohibit an individual or an unincorporated association of individuals engaged in the business of financial institutions from accepting public deposit except in the circumstances specified in this clause.

Clause 38.— This clause seeks to empower the District Magistrate to call for any information relating to acceptance of public deposits by an individual or an unincorporated association of individuals if he has reason to believe that such

individual or unincorporated association of individuals has contravened or is contravening the provisions of clause 37 and take such action as he deems fit.

Clause 39.—This clause seeks to empower the Central Government to issue directions from time to time to the Bank and also to call for returns, etc.

Clause 40.—This clause confers upon the Bank, in public interest, the power to exempt any financial institution or class of financial institutions or a financial company or a class of financial companies from the operation of any or all provisions of the Bill.

Clause 41.—This clause seeks to provide protection to the Central Government or the Bank or the Special Officer or any person, for any thing, which is in good faith done or intended to be done under the proposed legislation.

Clause 42.—This clause provides for the nomination facility by the depositor in the manner as may be specified by rules made by the Central Government. This provision is on the lines of the provisions contained in section 45QB of the Reserve Bank of India, 1934.

Clause 43.—This clause provides for penalties for contravention of the provisions of the Bill, rules, regulations, orders made or directions issued thereunder.

Clause 44.—This clause provides that any offence committed by a company and punishable under the proposed legislation would cover the persons incharge of company.

Clause 45.—This clause deals with cognizance of offences. It lays down that a court not inferior to that of a Chief Metropolitan Magistrate shall take cognizance of certain offence punishable under the provisions of the Bill. It further lays down that a court shall not take cognizance of certain offences punishable under the provisions of the Bill except on complaint made by an officer of the Bank.

Clause 46.—This clause, *inter alia*, empowers the Bank to adjudicate and impose penalty of the amount specified in this clause on a financial company for any contravention of any of the provisions of this Bill or default committed by such company.

Clause 47.—This clause empowers the Central Government to make rules for carrying out the provisions of this Bill.

Clause 48.—This clause empowers the Bank to make regulations consistent with the provisions of this Bill and the rules made thereunder.

Clause 49.—This clause requires that the rules and regulations made under the Bill are to be laid before both the Houses of Parliament.

Clause 50.—This clause excludes certain financial institutions specified in this clause, which are regulated under various other statutes from the applicability of this Bill.

Clause 51.—This clause seeks to provide that the provisions of this Bill shall have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force.

Clause 52.—This clause seeks to empower the Central Government to make any order for removing any difficulty which may arise in giving effect to the provisions of this Bill. Every order made under this clause shall be laid before each House of Parliament.

Clause 53.—This clause provides for the repeal and saving of the certain provisions contained in the Reserve Bank of India Act, 1934 which have been brought under this Bill with amendments.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for constitution of the Advisory Council for Financial Institutions. The expenditure for the Advisory Council shall be borne by the Reserve Bank of India and no expenditure is envisaged out of the Consolidated Fund of India.

Clause 18 of the Bill provides for appointment of Special Officers by Reserve Bank of India. The expenditure relating to Special Officers shall be borne by the Reserve Bank of India and no expenditure is envisaged out of the Consolidated Fund of India.

Clause 24 of the bill provides for making an application to the Board of Company Law Administration by a depositor in the event of a financial company failing to repay any public deposit or part thereof. The Board of Company Law Administration is already existing and no additional expenditure is contemplated. This clause also provides for appointment of Recovery Officers, receivers and commissioners. They will be appointed from the existing officers in the Department of Company Affairs and the Board of Company Law Administration and, therefore, no additional expenditure is envisaged.

The provisions of the Bill would not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to provide for the form of appreciation the documents and the fee which shall accompany such application under sub-section (2) of section 24; the manner of nomination of one person by the depositors under sub-section (1) of section 42; the manner of varying or cancelling the nomination in the event of death of the sole depositor or all the depositors under sub-section (2) of section 42; the manner in which minor nominee may be made under sub-section (3) of section 42; and any other matter which is to be, or may be, prescribed.

2. Clause 48 of the Bill confers power upon the Bank to make regulations consistent with the provisions of the Bill and the rules made thereunder to carry out the provisions of the Bill. The matters in respect of which such regulations may be made, relate *inter alia*, to provide for determination of time, place and observation of such rules and procedures in regard to transaction of business at the meetings of Advisory Council under sub-section (5) of section 3; the fees and allowances to be made to the nominated members, the manner of filling up of vacancy and the procedure to be followed in discharge of their functions under sub-section (8) of section 3 and the period within which the recommendations shall be made by the Advisory Council to the Bank under sub-section (2) of section 4.

3. The rules made by the Central Government and the regulations made by the Bank shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which the rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.

BILL NO. 198 OF 2000

A Bill further to amend the Cine-workers Welfare Fund Act, 1981.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

Short title and
commencement.

1. (1) This Act may be called the Cine-workers Welfare Fund (Amendment) Act, 2000.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of
section 2 of
Act 33 of
1981

2. In section 2 of the Cine-workers Welfare Fund Act, 1981, in clause (b), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) whose remuneration with respect to such employment in or in connection with the production of each of any five feature films, not being less than the monthly remuneration or lump sum remuneration stipulated prior to the commencement of the Cine-workers Welfare Fund (Amendment) Act, 2000, does not exceed such sum, whether monthly or by way of lump sum or instalments, as may be specified by the Central Government by notification in the Official Gazette.”.

STATEMENT OF OBJECTS AND REASONS

There are approximately 63,000 workers engaged in the cine industry. The Cine-workers Welfare Fund Act, 1981 (hereinafter referred to as Act) is applicable to cine-workers, as defined under the Act, whose remuneration with respect to the type of employment referred to in the Act does not exceed, where such remuneration is by way of monthly wages, a sum of one thousand and six hundred rupees per month, and where such remuneration is by way of lump sum, a sum of eight thousand rupees which has been prescribed under sub-clause (ii) of clause (b) of section 2. This ceiling was last revised in 1987 by an amendment of the said Act. Since then, there has been substantial increase in wages and remuneration of the cine-workers. The number of workers covered under the ongoing schemes has been found to be small. The reason is that the wage and remuneration limit prescribed under the Act has become insignificant and a large number of workers, therefore, remain outside the scope of definition of cine-workers due to increase in wages and remuneration over a period of time.

2. The amendment of the Cine-workers Welfare Fund Act, 1981 has become necessary in order to increase the limit of wages and remuneration under the Act so that the cine-workers, who are presently outside the definition of the cine-workers, due to increased wages and remuneration, may also be covered under the Act and in order to avoid frequent amendments of the Act. The Central Government is now being empowered to specify, by notification in the Official Gazette, to increase the ceiling of remuneration of cine-workers.

3. The Bill proposing amendment in sub-clause (ii) of clause (b) of section 2 of the Act seeks to achieve the aforesaid objects.

NEW DELHI;

The 1st December, 2000.

S. N. JATIYA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 2 of the Cine-workers Welfare Fund Act, 1981 in order to empower the Central Government to specify, by notification in the Official Gazette, such sum which entitles a cine-worker to the benefits under the said Act in case his remuneration whether monthly, lump sum or by instalments does not exceed the sum as notified by the Central Government from time to time.

BILL No. 203 OF 2000

A Bill further to amend the Finance Act, 2000 and the Income-tax Act, 1961.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Taxation Laws (Amendment) Act, 2000.

Short title.

2. In section 2 of the Finance Act, 2000 (hereinafter referred to as the principal Act)—

Amendment of section 2.

(a) in sub-section (4), in clause (b), for the words “ten per cent.”, the words “eleven per cent.” shall be substituted;

(b) in sub-section (6), in clause (b), for the words “ten per cent.”, the words “eleven per cent.” shall be substituted;

(c) in sub-section (7), in clause (b), for the words “ten per cent.”, the words “eleven per cent.” shall be substituted;

(d) in sub-section (8), in the third proviso, in clause (b), for the words “ten per cent.”, the words “eleven per cent.” shall be substituted.

Amendment
of the First
Schedule.

3. In the First Schedule to the principal Act,—

(a) in Part II, under the heading “*Surcharge on income-tax*”, in clause (b), for the words “ten per cent.”, the words “eleven per cent.” shall be substituted;

(b) in Part III, in Paragraph E, under the heading “*Surcharge on income-tax*”, for the words “ten per cent.”, the words “eleven per cent.” shall be substituted.

Amendment
of section
234C.

4. In section 234C of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in sub-section (1), in clause (b), after the first proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

“Provided further that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000, as amended by the Taxation Laws (Amendment) Act, 2000, and the assessee has paid the amount of shortfall, on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000.”.

Payment of
Surcharge.

5. Notwithstanding anything contained in the Income-tax Act, the surcharge payable under section 2 of, and Part III of the First Schedule to, the principal Act, as amended by this Act,—

(i) in the case of an assessee being a domestic company, shall in respect of the instalment of “advance tax” paid or payable on or before the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000, be payable on or before the 15th day of March, 2001;

(ii) in any case in which income-tax has to be charged under section 175 or sub-section (2) of section 176 of the said Act, shall be payable, in the case of an assessee being a domestic company, only where such income-tax is so charged after the date on which this Act receives the assent of the President.

43 of 1961.

10 of 2000.

STATEMENT OF OBJECTS AND REASONS

The Eleventh Finance Commission has recommended setting up of a National Centre for Calamity Management to monitor the natural calamities relating to cyclone, drought, earthquakes, fire, flood and hail-storm. It has also recommended that the assistance provided by the Centre to the States in this regard should be financed by a levy of special surcharge on the central tax for a limited period. The Government have accepted the recommendation of the Commission and have accordingly proposed to set up the National Calamity Contingency Fund. In order to mobilise resources for the contribution to be made by the Government to the said Fund, it has been decided to increase the surcharge by one per cent. on income-tax payable by domestic companies.

2. The Bill seeks to increase the rate of surcharge payable by domestic companies for the assessment year 2001-2002 from ten per cent. to eleven per cent. of the income-tax payable.

3. The Bill seeks to give effect to the proposal mentioned in paragraph 2.

NEW DELHI;

YASHWANT SINHA.

The 5th December, 2000

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 AND 274 OF THE
CONSTITUTION OF INDIA

[Copy of letter D.O. No. 149/276/2000-TPL(Pt.), dated the 6th December, 2000 from
Shri Yashwant Sinha, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill has recommended the introduction under articles 117(1) and 274(1) and consideration under article 117(3) of the Constitution in Lok Sabha.

G. C. MALHOTRA,
Secretary-General.

